



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1993

Ms. Kerrie Qualtrough  
Staff Attorney  
Texas Water Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR93-363

Dear Ms. Qualtrough:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20003.

The Texas Water Commission (the "commission") has received a request for information relating to the investigation resulting in a commission employee's termination. The requestor, who is the terminated employee at issue here, seeks:

a list of all the names of the individuals who have made the malicious statements about me or my children, copies of any written statements made or notes taken by agency staff and/or investigators and exactly what those statements were. I would also like to know who the investigators were and review their findings. In the event this goes to a hearing I want to know exactly what evidence would be presented by the Texas Water Commission or any other agency.

You have submitted the requested information to us for review and seek to withhold it under sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the

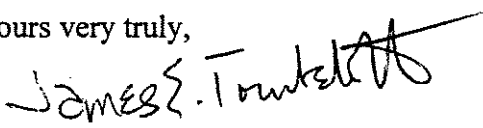
respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The letter in which the information at issue here is requested is a response to the requestor's termination and, in the requestor's words, a "grievance." The requestor generally complains of the commission's denial of due process in the proceedings resulting in his termination and states that his "termination was unfair and wrong." In addition, the requestor seeks "reinstatement with back pay and legal fees that have been and will be incurred." We conclude that the requestor's posture provides the commission with a reasonable basis for anticipating litigation. Having examined the documents submitted to us for review, we agree with your determination that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1) and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

  
James E. Tourtelott  
Assistant Attorney General  
Opinion Committee

JET/GCK/jmn

Ref.: ID# 20003

cc: Mr. Thomas P. McDill Jr., P. E.  
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